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KENNETH R. GLASER
MONIQUE A. VANDER MOLEN
GARDERE WYNNE SEWELL LLP
1601 ELM STREET, SUITE 3000
DALLAS, TX 75201-4761

EXAMINER

KAUFFMAN, BRIAN K

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/804,853	LEE, CRICKET	
	Examiner	Art Unit	
	Brian K. Kauffman	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/20/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 and 4-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Onyshkevych et al. (6,665,577).

In regard to claims 1-2, 4-6, 8-9, and 13, Onyshkevych et al. discloses a method of providing a garment fit to a target consumer group comprising the steps of determining common body types of the consumer group (col. 4, lines 40-43); establishing customized body measurement standards for each body type (col. 8, lines 37-41); selecting at least one real fit model for each body type (col. 7, lines 11-13);

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creating a sample garment in a range of sizes using grading rules; creating a sample garment on a fit model selected for each size and body type (col. 7, lines 31-47 and col. 8, lines 42-44); preparing a block for each sample garment size and body type; and using the block to provide a garment fit for a target consumer group (col. 8, 57-67).

In regard to claim 7, Onyshkevych et al. discloses that the block is created from slopers and used to prepare a starter pattern (col. 6, lines 55-67).

In regard to claim 10, Onyshkevych et al. discloses that the specific size that the sample garment is initially applied is in the middle of the range of sizes (col. 3, lines 26-29).

In regard to claim 11, Onyshkevych et al. discloses that the real fit model is used to check the sample garment fit before the block is prepared (col. 8, lines 61-65).

In regard to claim 12, Onyshkevych et al. discloses that the grading rules are applied to the sample garment after adjusting the sample garment to the selected real fit model (col. 8, line 61-col. 10, line 27).

In regard to claims 14-19 and 30, Onyshkevych discloses a system for preparing a custom fit garment comprising quantitative and qualitative data, including body point measurements about the target consumer group used to establish customized body measurement standards (col. 8, lines 37-41); a sample garment created from the customized body measurements standards (col. 42-44); a first real fit model with the body measurements that fall within the customized body measurement standards used to fit the sample garment (col. 7, 11-13); one or more grading rules to create sample garments in a range of sizes for the target consumer group (col. 7, lines 31-470; and a

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second fit model selected from the target consumer group and used to perfect the fit of the sample garment and prepare a custom fit garment (col. 7, lines 11-13).

In regard to claims 20-21, Onyshkevych et al. discloses that the custom fit garment is used to establish slopers, blocks, and patterns for production of the custom fit garment (col. 8, line 57-col. 10, line 27).

In regard to claims 22-24, Onyshkevych et al. discloses a method for providing a custom fit garment comprising the steps of selecting a target group based on at least one criteria (col. 4, lines 40-43); conducting research about the target group to obtain the data; identifying at least one body type from the data (col. 7, lines 11-13); providing size groupings for each body type (col. 8, lines 42-44); establishing customized body measurement standards for each size grouping (col. 3, lines 25-30); selecting a size in the middle of the size grouping to create a sample garment; checking fit of the sample garment on a real fit model with body measurements that conform with the customized body measurement standards (col. 8, lines 42-44); applying grading rules to the sample garment to obtain sample garments for the entire size grouping (col. 7, lines 31-52); checking fit at selected sizes using a real fit model for each size 9col. 8, lines 42-44); and creating custom fit garment at each size and body type after fits are checked (col. 1, lines 15-18).

In regard to claim 25, Onyshkevych et al. discloses grading rules that are applied to two sizes above and below the middle size after which the fit is checked on a real fit model (col. 7, lines 11-13 and 31-47 and col. 8, lines 42-44).

In regard to claim 26, Onyshkevych et al. discloses that the adjustment to the fit requires that the custom body measurement standards be adjusted (col. 8, lines 57-67).

In regard to claim 27, Onyshkevych et al. discloses improved grading rules provided for the garment comprising applied grading rules that grade the garment up and down from a selected size; and preferred grading rules, wherein fit of the garment is adjusted based on design and fit preferences obtained from one or more potential wearers of the garment (col. 8, line 57-col. 10, line 27).

In regard to claim 28, Onyshkevych et al. discloses a real fit model provided for fitting a garment, wherein the real fit model has body measurements within customized body measurement standards established for a particular body type and size (col. 7, lines 11-14).

In regard to claim 29, Onyshkevych et al. discloses a method of fitting a garment comprising the steps of creating a first garment at a size that is in the middle of a size grouping for a particular body type (col. 3, lines 25-29 and col. 8, lines 42-44); checking the fit of the first garment on a real fit model and making adjustments to the first garment where fit is unsatisfactory, wherein the real fit model has body measurements within customized body measurement standards for the particular body type and size (col. 8, lines 42-44); using applied grading rules to obtain new sizes above and below the first garment size (col. 7, lines 31-47); rechecking the fit of one or more new sizes above and below on a real fit model and adjusting the fit when unsatisfactory (col. 8, lines 42-44); and adjusting the customized body measurement standards when fit is unsatisfactory (col. 8, lines 42-44).

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In regard to claims 31-34, Onyshkevych et al. discloses a garment (col. 17, lines 4-18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Onyshkevych et al. (6,66,55,77).

Although Onyshkevych et al. does not disclose using a data set from Textile Technology Corporation, the data from Textile Technology Corporation is widely known in the art for research and analysis of consumer groups in relation to the textile industry. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize data from Textile Technology Corporation because its data is widely known in the art for research and analysis of consumer groups in relation to the textile industry.

Response to Arguments

Applicant's arguments filed 8/8/2005 have been fully considered but they are not persuasive.

In regard to claims 1-21, 26, and 30, the applicant argues that Onyshkevych et al. does not disclose the method of claim 1 or the system of claim 14 because Onyshkevych et al. merely provides definitions of unrelated terms that may potentially be used in the specification. The examiner asserts that the applicant has misinterpreted the specification and the purpose of the defined terms. These terms are not unrelated words chosen at random to fill space in the specification. Rather, they are explanations of vital steps in the creation of a custom fit garment. Onyshkevych et al. teaches that in order understand the steps of the method, certain terms describing these steps must be explained and goes so far as to say "[t]he following terms are used herein to more fully describe the system and method..." (col. 4, lines 30-34). The examiner will point out other sections of the specification that might help the applicant understand how Onyshkevych et al. teaches the steps of the method claimed in claim 1. The step of determining body types can also be found in col. 20, lines 1-7. The step of establishing customized body measurement standards for each body type can also be found in col. 11, lines 52-61). The step of selecting a real fit model for each body type can also be found in col. 8, lines 61-65. The steps of creating a sample garment in a range of sizes using grading rules and creating a sample garment on a fit model selected for each size and body type can also be found in col. 17, lines 4-18. The elements of the system

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claimed in claim 14 are the inherent results of the method of claim 1 and can be found in the same locations in the specification as shown above.

In regard to claims 22-25, the applicant argues that Onyshkevych et al. does not disclose the method of claim 22 because Onyshkevych et al. merely provides definitions of unrelated terms that may potentially be used in the specification. The examiner asserts that the applicant has misinterpreted the specification and the purpose of the defined terms. These terms are not unrelated words chosen at random to fill space in the specification. Rather, they are explanations of vital steps in the creation of a custom fit garment. Onyshkevych et al. teaches that in order understand the steps of the method, certain terms describing these steps must be explained and goes so far as to say "[t]he following terms are used herein to more fully describe the system and method..." (col. 4, lines 30-34). The examiner will point out other sections of the specification that might help the applicant understand how Onyshkevych et al. teaches the steps of the method claimed in claim 22. The step of selecting a target group based on one criteria and conducting research about the target group to obtain data can also be found in col. 19, line 60-col. 20, line 7. The step of providing size groupings for each body type can also be found in col. 8, lines 61-65. The step of selecting a size in the middle of the size grouping to create a sample garment and checking the fit of the sample garment on a real fit model with body measurements that conform with the customized body measurement standards can also be found in col. 8, lines 61-65 and col. 17, lines 4-18. In regard to the step of establishing customized body measurement standards for each size grouping, col. 3, lines 25-30, describe establishing a perfect fit,

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which is a customized body measurement standard for a size grouping. Onyshkevych et al. doesn't merely define the term "perfect fit" in Col. 3, lines 25-30, but rather discloses a step in the method by referring to the term "perfect fit". The step of applying grading rules to the sample garment fit on a real fit model can also be found in col. 17, lines 4-18. Contrary to the applicant's assertion, col. 1, lines 15-18 is not just an abstract of the invention but teaches creating an article of manufacture (or custom fit garment) at each size and body type after fits are checked (fit and size of a garment on a customer and providing appropriate garment selections to meet a customer's needs).

In regard to claim 27, the applicant argues that Onyshkevych et al. does not teach improved grading rules. The applicant explains that Onyshkevych et al. only teaches complex mathematical calculations for curve development. The examiner asserts that contrary to applicant's argument, the curves taught by Onyshkevych et al. are the improved grading rules. The applicant is directed to col. 7, lines 31-47 for an in depth explanation of the grading rules.

In regard to claim 28, the applicant argues that Onyshkevych et al. merely discloses a general definition that might be used somewhere in the specification and has no relation to claim 28. The applicant points out that claim 28 requires a real fit model provided for fitting a garment. Col. 7, line 11 teaches a person who tries on the garment to test fit (also known as a real fit model for fitting a garment). Claim 28 also requires that the real fit model have body measurements within customized measurement standards established for a particular body type and size. Col. 7, lines 12-13 teaches the person or body shape for whom the garment was designed. It is

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inherent that the person or body shape has body measurements within customized body measurement standards for a particular body type and size since the fit model is by definition that particular body shape and size. The examiner also points out that even if Onyshkevych et al. merely taught a general definition of "fit model", that definition contains all of the elements required by claim 28 and therefore anticipates claim 28.

In regard to claim 29, the applicant is directed to the examiner's response to arguments for claims 1-25 in relation to the applicant's argument that the examiner used mere "general definitions" to reject claim 29. In regard to the applicant's assertion that Onyshkevych et al. do not disclose a method of creating a garment, the applicant is directed to col. 17, lines 4-18 where Onyshkevych et al. teaches creating a virtual garment, which is a garment.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gioello (4,546,434) discloses a method for designing apparel. Slilaty (5,163,007) discloses a system for measuring custom garments. Park et al. (5,548,519) discloses a custom apparel manufacturing method and apparatus. Patterson et al. (5,680,314) discloses a garment sizing system. Surville (5,757,661) discloses a garment grading system. Park et al. (5,768,135) discloses a custom apparel manufacturing apparatus and method. Rose (5,930,769) discloses a system and method for fashion shopping. Gazzuolo (6,701,207) discloses a method for

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integrating clothing fit information. Gazzuolo (6,546,309) discloses a virtual fitting room). Swab (6,564,118) discloses a system for creating custom apparel.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Kauffman whose telephone number is (571)272-4988. The examiner can normally be reached on M-F every week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571)272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKK
10/18/05



JOHN L. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700